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May 15, 2007

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 W. Temple Street,
Los Angeles, CA 90012

Dear Supervisors:

**DESIGNATION OF THE ENTIRE DEPARTMENT OF PUBLIC HEALTH AS A PART OF
THE COUNTY'S HEALTH CARE COMPONENT UNDER THE HEALTH INSURANCE
PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
AND RELATED ACTIONS
(All Districts) (3 Votes)**

IT IS RECOMMENDED THAT YOUR BOARD:

Designate the entire Department of Public Health (DPH or Department) as included within the County's single "Health Care Component" in order to ensure the Department's continued compliance with HIPAA and to ensure that the Department's use of health information is not impeded.

PURPOSE:

The purpose of the recommended actions is to formally designate the newly established DPH as part of the County's HIPAA-covered Health Care Component. Four years ago, in implementing HIPAA's requirements, your Board, rather than bringing all of the County's operations under HIPAA, elected to declare the County a "hybrid entity" designating only certain services as being subject to HIPAA regulations. Under HIPAA's hybrid entity rules, the County designated, for purposes of HIPAA, a single HIPAA-covered Health Care Component and included the Department of Health Services (DHS) and all of its functions within the Health Care Component. At the time of this initial designation, the Division of Public Health and all of its functions were a part of DHS.

As a consequence of your Board's division of DHS and its various functions into two departments, and the creation of a separate DPH, County Counsel, and the outside counsel firm of Theodora, Oringer, Miller & Richman, P.C., conducted an assessment of whether the entire DPH should be included in the County's Health Care Component or whether any portion of the Department should be excluded. Based upon that review, it is recommended that the entire DPH be designated as part of the County's Health Care Component and therefore subject to the provisions of HIPAA.

JUSTIFICATION:

Under HIPAA's hybrid entity rules, the County has the option to exclude some of DPH's divisions from the Health Care Component. Excluding some of DPH's divisions brings the obvious benefits of eliminating expensive and time-consuming HIPAA implementation and compliance activities for such divisions.

However, designating only certain divisions within DPH as part of the County's Health Care Component could impede the sharing of Protected Health Information (PHI) within DPH and would make it much more difficult for the designated divisions to share PHI without client authorization with the non-designated divisions for business planning and other activities. In addition, a number of operational controls would need to be implemented to keep designated divisions from sharing PHI with non-designated divisions. If such operational controls were not strictly followed, DPH could face significant consequences for the unauthorized disclosure of PHI.

However, if your Board elects to designate the entire DPH as part of the County's Health Care Component, the exchange of PHI within DPH will not be affected. Indeed, by designating the entire Department as part of the Health Care Component, there will be no negative impact on sharing of PHI within DPH or among DPH and the entities with which it shared PHI when it was part of DHS. Further, designating the entire DPH as part of the Health Care Component will extend HIPAA privacy and security protections to all PHI within the Department as has been the case since HIPAA was initially implemented by the County nearly four years ago.

Accordingly, it is recommended that your Board designate the entire Department as included within the Health Care Component. Once so designated, the Department will need to develop its own HIPAA policies and procedures, execute its own interdepartmental Memorandums of Understanding (MOUs) with those County departments that provide services to DPH and may require access to DPH's PHI, and execute appropriate HIPAA agreements with contractors who require or might have access to PHI.

FISCAL IMPACT/FINANCING:

Designation of the DPH as part of the County's Health Care Component and any potential costs to the Department as a result of this designation will be absorbed by the DPH through existing resources.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS:

Under HIPAA rules, "hybrid entities" such as the County may bring all their operations under HIPAA or designate only certain services as being subject to HIPAA.

In determining whether or not some or all of the DPH should be included in the Health Care Component of the hybrid entity, Theodora, Oringer, Miller & Richman PC has been guided by the HIPAA statute and regulations. The regulations permit the covered entity to determine which of its units are Health Care Components pursuant to the following criteria:

1. A component that would meet the definition of a "covered entity" if it were a separate legal entity must be included in the Health Care Component.
2. Divisions or departments of a covered entity that perform covered functions, or the covered functions themselves may be included.
3. Another component of the covered entity whose activities would make it a business associate of the component that performs covered functions if the two were separate legal entities may be included. If these business associate-like functions are not designated as part of the Health Care Component, the Health Care Component could share protected health information with the non-Health Care Component if the components were to enter into an MOU with each other with terms similar to those in a business associate agreement.

On January 7, 2003, your Board formally declared the County to be a "hybrid entity" and formally designated a single Health Care Component. Currently, included in this single Health Care Component are the Department of Health Services, the Department of Mental Health, the Probation Department's Dorothy Kirby Treatment Center, and the Sheriff's Medical Services Bureau Pharmacy. Your Board also delegated to the Departments comprising the Health Care Component the authority and responsibility to develop and promulgate privacy policies and procedures in accordance with HIPAA. In a separate approval on January 7, 2003, your Board approved HIPAA "Business Associate" and other HIPAA language for inclusion in all suitable agreements and delegated authority to the Departmental Directors to prepare, sign, and execute amendments to

include required HIPAA language in all appropriate agreements. On March 25, 2003, your Board also formally established an MOU Process and related Administrative Dispute Resolution Process (ADRP) for certain County Departments to permit them to receive and use PHI from the covered Health Care Component Departments, and delegated authority to Department Directors to prepare, sign and execute the MOUs. DHS developed, promulgated, and implemented such HIPAA policies and procedures and executed the MOUs and Business Associate Agreements as necessary for HIPAA compliance. These DHS policies and procedures, MOUs, and Business Associate Agreements were applicable to and encompassed the activities of the current DPH. However, on May 30, 2006, your Board approved separating the Division of Public Health from DHS, creating, effective, July 6, 2006, a new, standalone DPH. Although HIPAA permits the County to exclude some portions of DPH from the County's Health Care Component, to do so would impede health information sharing within DPH and could potentially lessen its privacy and security protections.

The effects of the designation of the DPH as included within the County's single Health Care Component are as follows:

1. The County must have adequate firewalls between DPH, as part of the County's Health Care Component, and the County's non-Health Care Components.
2. DPH may not disclose PHI to the non-Health Care Components where such disclosure would be prohibited if it and the non-Health Care Component were separate legal entities.
3. A component that performs business associate functions may not use or disclose PHI that it creates or receives from or on behalf of DPH in a way prohibited by HIPAA.
4. If a workforce member performs duties for both DPH and a non-Health Care Component, such workforce member may not use or disclose PHI created or received in the course of or incident to the member's work for the DPH except in compliance with HIPAA.

CONCLUSION:

Approving the designation of the entire DPH as a part of the County's Health Care Component under HIPAA will ensure the continued application of privacy and security protections to all of DPH's protected health information and will ensure that the

necessary sharing of such information within the Department, between DPH and other Departments comprising the Health Care Component, such as DHS, is not impeded.

Respectfully submitted,



 Jonathan E. Fielding, M.D., M.P.H.
Director and Health Officer

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BLGI.00135
05/03/07

c: Auditor-Controller
Chief Administrative Officer
Chief Information Officer
County Counsel
Director, Department of Health Services
Director, Internal Services Department
Executive Officer, Board of Supervisors
Information Systems Commission
Treasurer and Tax Collector